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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/811,423

03/26/2004

Tenneille E. Ludwig

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07/20/2006

QUARLES & BRADY LLP

FIRSTAR PLAZA, ONE SOUTH PINCKNEY STREET

P.O. BOX 2113 SUITE 600

MADISON, WI 53701-2113

EXAMINER

AFREMOVA, VERA

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Claims 1-11 are pending and subject to restriction requirement.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-5, drawn to a method for culturing human embryonic stem cells under atmosphere having no more than about 5% oxygen, classified in class 435, subclass 366, for example.
- II. Claims 6 and 7, drawn to a medium composition with osmolarity in excess of 330 mOsm, classified in class 435, subclass 404, for example.
- III. Claims 8 and 9, drawn to a cell culture kit comprising a culture plate, a nutrient medium, human embryonic stem cells, and a medium with osmolarity in excess of 330 mOsm, classified in class 435, subclass 810, for example.
- IV. Claims 10 and 11, drawn to a , classified in class 435, subclass 366, for example.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and IV are drawn to different methods as claimed wherein the claimed methods comprise different active steps and cell manipulations under different conditions as claimed.

Inventions II and III are drawn to different products as claimed wherein the different products are culture medium and a kit that require different components as claimed.

Inventions II and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product

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as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case a medium with osmolarity in excess of 330 mOsM can be used for protein production as taught by US 4,724,206 (IDS reference), for example: see abstract.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicants is advised that the reply to this requirement to be complete must include (i) an election of invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either

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instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Afremova whose telephone number is (571) 272-0914. The examiner can normally be reached from Monday to Friday from 9.30 am to 6.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached at (571) 272-0926.

The fax phone number for the TC 1600 where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology center 1600, telephone number is (571) 272-1600.

Vera Afremova

AU 1651

July 18, 2006

A handwritten signature in black ink, appearing to read 'V. Afremova', with a long horizontal flourish extending to the right.

VERA AFREMOVA

PRIMARY EXAMINER